



1155 Avenue of the Americas
22nd Floor
New York, NY 10036-2711

T +1.212.262.6900
F +1.212.977.1649
PerkinsCoie.com

April 26, 2022

Matthew J. Moffa
MMoffa@perkinscoie.com
D. +1.212.261.6857
F. +1.212.399.8057

VIA ECF

Hon. Valerie Figueredo, Magistrate Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

**Re: FCX Solar, LLC v. FTC Solar, Inc.,
Case Nos. 1:21-CV-03556-RA-VF, 1:21-CV--08766-RA (consolidated)**

Dear Judge Figueredo:

The consolidated actions identified above were reassigned to you today for general pretrial proceedings, including discovery issues, and motions previously pending before Judge Debra Freeman have been referred to your Honor.

Plaintiff FCX Solar writes to respectfully request that the Court grant relief requested by FCX in connection with the long running discovery dispute between itself and Defendant FTC Solar, Inc., summarized below:

On November 2, 2021, Plaintiff moved for a local Rule 37.2 conference before Judge Freeman, seeking *inter alia* production of technical and testing documents relating to Defendant's solar tracker products and its potential future products under design (also referred to as "next-gen" products). (ECF No. 43¹). As set forth in Plaintiff's papers and hearing arguments addressed below, those documents are discoverable and nonburdensome to produce, are relevant to Plaintiff's claim for damages and willful infringement, and further support Plaintiff's position that its patents are valid and non-obvious.

Defendant responded to Plaintiff's motion on November 5, 2021. (ECF No. 44). Judge Abrams then referred this case to Judge Freeman for pretrial purposes on November 9. (ECF No. 46). The parties promptly refiled their papers with Judge Freeman on November 9 and 10. (ECF Nos. 47, 48).

Judge Freeman did not address the motion until a status conference was held on February 1, 2022. (Transcript at ECF No. 60). At that hearing, Judge Freeman acknowledged the delay,

¹ All ECF document numbers are to Case No. 1:21-cv-3556.

Judge Valerie Figueredo
April 26, 2022
Page 2

heard argument from both sides on this and other discovery disputes, and advised the parties to further meet-and-confer. The parties held multiple conferences but did not reach agreement as to production of the technical and testing documents.

On March 23, 2022, Plaintiff filed a letter motion before Judge Freeman to *inter alia* compel production of Defendant's technical and testing documents. (ECF No. 78). Defendant responded on March 28 and, after a further meet-and-confer, responded again on April 6. (ECF No. 80). A second hearing was held on April 6 before Judge Freeman, at which Judge Freeman invited both sides to exchange and file legal authorities supporting their respective positions. (Transcript at ECF No. 90). The parties promptly did so. (ECF Nos. 93, 95, 96, 97). However, Judge Freeman did not rule on Plaintiff's motion.

This issue is fully briefed and ripe for resolution, particularly in view of the time remaining for fact discovery. (All fact discovery is to be completed no later than July 11, 2022, or 60 days after the Court issues its claim construction order, whichever is later. ECF No. 52.) Plaintiff understands that Judge Freeman has retired and appears to have done so without reaching a decision on Plaintiff's motion.

Plaintiff respectfully requests, in view of the foregoing briefing and argument, that Your Honor order Defendant FTC Solar, Inc. to produce (under protective order, as appropriate) all technical and testing-related documents for its current and next-generation (alternative design) solar trackers—including at least testing documents regarding wind tunnel testing, field testing (*e.g.*, “pluck” testing), and analytical (*e.g.*, “ADAMS”) modeling. (*See* ECF Nos. 78, 93, 96). Alternatively, if additional submissions or a conference would be helpful to the Court in deciding the motion, Plaintiff would be pleased to provide the Court with additional information.

Respectfully submitted,

/s/ Matthew J. Moffa

Matthew J. Moffa
Counsel for Plaintiff FCX Solar, LLC